

BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Cook	AB 2671

SUBJECT

Minimum Franchise Tax/Exempt Corporations And Limited Liability Companies Owned Solely By Deployed Member Of U.S. Armed Forces That Operate At A Loss Or Cease Operations

SUMMARY

This bill would exempt certain corporations and limited liability companies (LLCs) owned solely by a deployed member of the U.S. Armed Forces from the \$800 annual tax or minimum franchise tax.

PURPOSE OF BILL

It appears that the purpose of the bill is to provide tax relief to members of the US Armed Forces called to service to defend the nation.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately and would apply to taxable years beginning on or after January 1, 2010, and would be specifically inoperative for taxable years beginning on or after January 1, 2018.

ANALYSIS

FEDERAL/STATE LAW

Federal law has no minimum franchise tax on business entities comparable to the California minimum franchise or annual tax.

Every corporation, including an LLC classified as a corporation, incorporated or organized in, qualified to do business in, or doing business in California must annually pay to the state a minimum franchise tax of \$800.

The minimum franchise tax applies from the earlier of the date of incorporation or organization, qualification, or commencing to do business within California until the date of dissolution, surrender, or if later, the date the corporation ceases to do business in California. This liability exists regardless of whether the corporation is earning income. Every corporation that incorporates or is qualified to do business in this state on or after January 1, 2000, is not subject to the minimum franchise tax for its first taxable year.

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Under current state law, an LLC not classified as a corporation must pay the \$800 annual LLC tax if it is organized, doing business, or registered in California.

Certain nonprofit cooperative associations organized on or after January 1, 1994, are exempt from the minimum franchise tax for the first five consecutive taxable years after a certificate is issued under the Food and Agricultural Code. The minimum franchise tax expressly does not apply to credit unions. Certain inactive gold and silver mining corporations are subject to a reduced minimum franchise tax of \$25 instead of \$800.

THIS BILL

This bill would allow either a corporation or an LLC that is a small business with a sole owner who is a member of the U.S. Armed Forces to be exempt from paying the \$800 minimum franchise tax (corporation, including an LLC classified as a corporation) or \$800 annual tax (LLC not classified as a corporation) for any taxable year if both of the following apply:

- The owner is deployed during that taxable year, and
- The corporation operates at a loss or ceases operation in that taxable year or the LLC operates at a loss or ceases operation.

The bill would authorize the Franchise Tax Board (FTB) to promulgate necessary or appropriate regulations to carry out the purposes of the section, including specific authorization for FTB to provide for a definition of “ceases operation.”

This bill would define the following terms:

- “Deployed” would mean being called to active duty or active service during a period when a Presidential Executive order specifies that the U.S. is engaged in combat or homeland defense. “Deployed” would specifically exclude temporary duty for the sole purpose of training or processing and a permanent change of station.
- Under Personal Income Tax Law, “operates at a loss” would mean a limited liability company’s expenses exceed its receipts.
- Under Corporation Tax Law, “operates at a loss” would mean negative net income as allowed under California law.¹
- “Small business” would mean a corporation or LLC with total income from all sources derived from, or attributable to, the state of \$250,000 or less.

¹ Revenue and Taxation Code (R&TC) section 24341. “Net income” means the gross income, computed under Chapter 6 (commencing with Section 24271), less the deductions allowed under this article and Article 2 (commencing with Section 24401).

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida and Michigan have no minimum franchise tax.

Illinois, Massachusetts, Minnesota, and New York have a minimum franchise tax, but don't have a provision similar to this bill.

FISCAL IMPACT

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

ECONOMIC IMPACT

Estimated Revenue Impact of AB 2671 Operative For Tax Years Beginning On or After January 1, 2010 Assumed Enactment Date Before June 30, 2010		
2010/2011	2011/2012	2012/2013
*	*	*
* Negligible revenue loss, less than \$100,000.		

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Appointments

None.

Support/Opposition

Support: None received

Opposition: None received

VOTES

Assembly Floor – Ayes: 72, Noes: 0
Senate Floor – Ayes: 35, Noes: 0
Concurrence – Ayes: 76, Noes: 0

LEGISLATIVE STAFF CONTACT

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